

1 J. Henk Taylor (016321)
 2 **WARNER ANGLE HALLAM**
 3 **JACKSON & FORMANEK PLC**
 4 2555 East Camelback Road, Suite 800
 5 Phoenix, Arizona 85016
 Tel.: (602) 264-7101
 Fax: (602) 234-0419
 Email: htaylor@warnerangle.com

6 Joshua Wurtzel (*admitted pro hac vice*)
 7 Jessica Caterina (*admitted pro hac vice*)
7 SCHLAM STONE & DOLAN LLP
 8 26 Broadway, 19th Floor
 9 New York, New York 10004
 Tel.: (212) 344-5400
 Fax: (212) 344-7677
 Email: jwurtzel@schlamstone.com
 Email: jcaterina@schlamstone.com

11 *Attorneys for Defendant and*
 12 *Counterclaim-Plaintiff*

13 **UNITED STATES DISTRICT COURT**
 14 **DISTRICT OF ARIZONA**

15 Reliance Hospitality LLC, d/b/a Reliance
 16 Hotel Group, a Delaware limited liability
 17 company,

18 Plaintiff,

19 v.

20 5251 S. Julian Drive, LLC, d/b/a Stay Tucson
 Inn and Suites,

21 Defendant.

22 5251 S. Julian Drive, LLC, d/b/a Stay Tucson
 Inn and Suites; et al.,

23 Counterclaim-Plaintiffs,

24 v.

25 Reliance Hospitality LLC, d/b/a Reliance
 Hotel Group,

26 Counterclaim-Defendant.

15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25
 26
 27
 28
 No. CV-22-00149-TUC-JAS-MSA

**MOTION TO WITHDRAW AS
 COUNSEL OF RECORD FOR
 DEFENDANT/COUNTERCLAIM-
 PLAINTIFF 5251 S. JULIAN DRIVE,
 LLC, d/b/a STAY TUCSON INN AND
 SUITES WITHOUT CONSENT**

(Assigned to the Honorable James A.
 Soto)

(Referred to the Honorable Maria S.
 Aguilera, Magistrate Judge)

1 Pursuant to L. R. Civ. 83.3(b)(2), the law firm of Schlam Stone & Dolan LLP
2 (“SS&D”), counsel for Defendant/Counterclaim-Plaintiff, 5251 S. Julian Drive LLC, d/b/a
3 Stay Tucson Inn and Suites (“5251 S. Julian”), and the law firm of Warner Angle Hallam
4 Jackson & Formanek PLC (Warner Angle”), local counsel for 5151 S. Julian, hereby
5 move this court for an Order permitting their withdrawal as attorneys of record for 5251 S.
6 Julian. This Motion is supported by the Certificate of Counsel referenced herein.
7

8 A client’s failure to pay legal fees constitutes grounds to withdraw. *See Shimko &*
9 *Piscitelli v. Woodcock*, No. 2:05-cv-01387, 2007 WL 865402, at *3 (D. Ariz. March 20,
10 2007) (granting attorney’s motion to withdraw as counsel for defendants on the grounds
11 that “[d]efendants have been unable to pay legal fees for the last several months and are
12 unable to pay for further legal representation.”).
13

14 Here, 5251 S. Julian owes SS&D a total of \$176,640.43 in fees and disbursements,
15 which, despite SS&D’s repeated demands, 5251 S. Julian has failed to pay. And 5251 S.
16 Julian similarly owes Warner Angle a total of \$5,673.50 in fees and disbursements, which
17 5251 S. Julian has similarly failed to pay to Warner Angle. 5251 S. Julian has not made a
18 payment to SS&D since January 2024, and has not made a payment to Warner Angle
19 since November 14, 2023.
20

21 While we would have made this motion long ago, we agreed with 5251 S. Julian’s
22 principals that we would hold off making this motion until after all pending motions—
23 both the summary judgment motion in this action and the motion to dismiss in the related
24 action captioned *Reliance Hospitality LLC v. 2930 Waterfront, et al.* (23-CV-00229) (the
25 “Related Case”)—were resolved, as 5251 S. Julian’s principals stated that, after resolution
26
27
28

1 of these motions, the case would be settled one way or another. Indeed, whether summary
2 judgment was granted in favor of Reliance was obviously critical to any potential
3 settlement discussions in this action. And the motion to dismiss in the Related Case—
4 which stems from alleged breaches of substantively identical hotel management
5 agreements with Reliance (which were initially part of this action until this Court
6 dismissed these claims on January 12, 2023 as being misjoined (Dkt. 56)—related to
7 defendants' counterclaim that Reliance was liable to it for potentially millions of dollars
8 in Employee Retention Credits, and was thus also critical to any potential settlement
9 discussions.

12 On September 27, 2024, the Court in this action adopted the Report and
13 Recommendation issued by United States Magistrate Judge Aguilera, granting in part and
14 denying in part Plaintiff's Motion for Summary Judgment. (Dkt. 120). This came a week
15 after the Court in the Related Case issued its Order granting Reliance's Motion to Dismiss
16 Defendants' Counterclaim for Breach of the Hotel Management Agreements ("HMAs")
17 between Reliance and 5251 S. Julian (though the court previously allowed separate
18 claims based on a similar theory to proceed).

21 Despite the resolution of these motions and our clients' representations to us that
22 this action would likely be resolved after this resolution (which, as explained above, was
23 the reason we did not move to be relieved as counsel a year ago), it does not appear that
24 any settlement will be reached in this action. And given that a Joint Proposed Pretrial
25 Order is due in this action on November 27, 2024 (Dkt. 122), and trial will likely be
26 scheduled after that, we are forced to make this motion now. Nor can we continue in this
27
28

1 case with the significant balance that remains unpaid—despite repeated demands—and
2 likely significant additional fees and disbursements to be incurred in the future.
3

4 While this action is beyond summary judgment, Reliance's motion for summary
5 judgment was just recently finally resolved. Nor has a trial date been set. Thus, there will
6 not be any unfair prejudice to any of the parties in this action as a result of our
7 withdrawal.
8

9 We request that this Court stay this action for 30 days after resolution of this
10 motion so that 5251 S. Julian can obtain new counsel. In addition, we also request that all
11 deadlines in this action be stayed during the pendency of this motion, as SS&D would be
12 substantially burdened if it had to prepare substantial pretrial submissions without being
13 paid for its time.
14

15 On October 21, 2024, we informed 5251 S. Julian that we would be making this
16 motion to withdraw, and also that we assert a retaining lien and charging lien.
17

18 Defendant/Counterclaim-Plaintiff's name, mailing address and email address are as
19 follows:
20

21 Yaacov Amar
22 5251 S. Julian Drive, LLC
23 5251 S Julian Dr, Tucson, AZ 85706
24 Telephone: (520) 329-4817
25 Email: yaacovamar@hotmail.com

26 **CERTIFICATE OF COUNSEL**
27

28 Pursuant to L. R. Civ. P. 83.3(b)(2), I certify that I have advised the client, in
writing, of the status of the case, including the dates and times of any outstanding court
hearings or trial settings, compliance with any existing court orders, and the possibility of

1 sanctions. The Court is requested to enter the proposed form of Order allowing
2 withdrawal of counsel for Defendant/Counterclaim Plaintiff 5251 S. Julian Drive, which
3 is being lodged contemporaneously herewith.
4

5 **RESPECTFULLY SUBMITTED** November 5, 2024.

6 **SCHLAM STONE & DOLAN LLP**

7 By:
8

9 Joshua Wurtzel
10 Jessica Caterina
11 26 Broadway
12 New York, New York 10004
13 Telephone: (212) 344-5400
14 Facsimile: (212) 34407677
15 Email: jwurtzel@schlamstone.com
16 Email: jcaterina@schlamstone.com

17 **WARNER ANGLE HALLAM**
18 **JACKSON & FORMANEK PLC**

19 J. Henk Taylor (016321)
20 2555 East Camelback Road, Suite 800
21 Phoenix, Arizona 85016
22 Tel.: (602) 264-7101
23 Fax: (602) 234-0419
24 Email: htaylor@warnerangle.com

25 *Attorneys for Defendant and Counterclaim-
26 Plaintiffs*
27
28

1 ORIGINAL e-filed via ECF
2 and served via ECF and by email
3 this 5th day of November, 2024
4 as follows:

5 Lindsay G. Leavitt
6 RivaLee Ferland
7 **GALLAGER & KENNEDY, P.A.**
8 2575 East Camelback Road, Suite 1100
9 Phoenix, Arizona 85016
10 Tel.: (602) 530-8000
11 Email: lindsay.leavitt@gknet.com
12 rivalee.ferland@gknet.com

13 *Attorneys for Plaintiff and Counterclaim-
14 Defendant Reliance Hospitality LLC,
15 d/b/a Reliance Hotel Group*

16
17 _____
18 /s/ *Lasya Androsiuk*
19 Lasya Androsiuk

20
21
22
23
24
25
26
27
28